

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 2077 OF 1986

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Order?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

U N PANDIT

VERSUS

STATE OF GUJARAT

Appearance:

MR AM RAWAL for the Petitioner

MR SK PATEL for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 30/12/1999

C A V JUDGMENT

#. The petitioner, the then Deputy Executive Engineer in the office of the respondent-Chief Engineer and Joint

Secretary to the Government of Gujarat, Irrigation Department, Gandhinagar, by this petition under Article 226 of the Constitution of India challenges the order of the State Government, Narmada Development Department dated 29/03/86 under which he was ordered to be prematurely retired from the service.

#. This petition is contested by the respondents. Reply to this petition has been filed in which the adversity in the service record has been mentioned in extenso. The arguments in this case were heard on 11/8/99. The judgment was kept C.A.V. The matter was again listed for hearing on 22/9/99 to see the record of the Review Committee. The respondents have given out detailed record of case, which is taken on record.

#. The learned counsel for the petitioner contended that it is a case of punitive exercise of powers by the respondent under Rule 161 of the Bombay Civil Service Rules, 1959. It is a case where to punish him for the charges, this order has been passed. The learned counsel for the petitioner contended that it is not a simpliciter order of premature retirement of the petitioner but it is a punitive order. It has next been contended that the adverse remarks communicated for period from 1/4/80 to 30/7/80 were received by the petitioner but his representation as against the same has not been decided. The power under Rule 161 of the Bombay Civil Services Rules, 1959 has been exercised at the age of 52 years, which is not justified. Relying on the decision of this court in the case of The State of Gujarat & Anr. Vs. Suryakant Chunilal Shah reported in 1999(1) G.L.H. 193 the learned counsel for the petitioner submits that it is a clear case where the Review Committee has been formed and recommended for premature retirement of the petitioner without there being any evidence and justification. In the absence of material or the evidence to form the opinion the recommendation made by the Review Committee for premature retirement of petitioner are perverse.

#. In contra the learned counsel for the respondents contended that it is a case where on the basis of the material on the record the opinion has been formed by the Review Committee, which cannot be termed as perverse. The service record of the petitioner has been taken into consideration and, thereafter the opinion is formed and as such it cannot be said that no evidence was available with the Review Committee. Replying to the other contention of the counsel for the petitioner, the learned counsel for the respondent submitted that it is not the

indefeasible right of the petitioner to continue in the services though it is not in the public interest to continue him in services. At the age of 50 years normal rule is to review the case and thereafter at the age of 55 it may again review in case the material is available and it was considered to be a case in public interest. It cannot be reviewed earlier to reach the age of 55 years, is not correct. The power to prematurely retire the government servant in the contention of the learned counsel for the respondent cannot be restricted at any point of time as what the learned counsel for the petitioner contended. This power is exercised in public interest and as such it can be exercised at any time. Only the restriction under the circular is that the government servant / officer shall not be permitted to retire prematurely during the last year of the services.

#. I have given my thoughtful consideration to the rival contentions made by the learned counsel for the parties. The date of birth of the petitioner is 9/5/34 and he completed 50 years of service on 5/8/84. It is not the case of the petitioner that at the age of 50 years his case was reviewed by the Review Committee. The respondents in para 4 of reply has made a categorical statement that on attaining the age of 50 years in May 1984, the petitioner's case was not reviewed and first time it was reviewed in the year 1986. These facts have not been controverted by the petitioner. The contention of the petitioner in these facts i.e. case could not have been reviewed earlier to the date on which the petitioner attains the age of 54 years is wholly misconceived. Leaving apart the circulars on which reliance has been placed in a case where the case of an officer is not reviewed by the Reviewing Committee at the age of 50 years this point is not available to be raised by the officer in case at later point of time his case is considered and ordered to be prematurely retire on the recommendations of the review committee. In this case, the petitioner's case has been considered by review committee first time in the year 1986. The contention of the learned counsel for the petitioner is accepted though it is difficult to accept then if the case of an officer or employee is not reviewed by Review Committee at his age of 50 years, he will acquire a right to continue in service despite of the fact that it is not in public interest till he attains the age of 55 years. Such an interpretation if is given to the rules, regulations or circulars, it will be detrimental to the public interest. The Rule 161 of Bombay Civil Services Rules, 1959 nowhere contemplates at what age the cases of officers/employees to be considered for their premature retirement. The

public interest is predominant consideration and it is permissible to the appointing authority even in the case where the case of an officer is not considered by Review Committee at the age of 50 years, can be considered his case for premature retirement at any point of time even before he attain the age of 55 years. The first contention raised by the learned counsel for the petitioner is de void of any merits and hence the same cannot be accepted.

#. In the case of Union of India Vs. Col. J.N.Sinha and Ors. reported in 1970 2 SCC 458 the Lordships of the Supreme Court has held;

"If the appropriate authority forms the requisite opinion bona fide its opinion cannot be challenged before the courts though it is open to an aggrieved party to contend that the requisite opinion has not been formed or that it is based on collateral grounds or that it is an arbitrary decision".

#. In the case of Baikuntha Nath Das and Anr. Vs. Chief District Medical Officer and Anr. JT 1992 2 SC 1, the Lordships of Supreme Court has laid down five principles, which are to be borne in mind while considering the cases of compulsory or premature retirement of the officer or servant of the government or corporation etc. In para No.9 of the judgment aforesaid the Lordships of Supreme Court held;

"Principles of natural justice have no place in the context of an order of compulsory retirement. this does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material. in short, if it is found to be a perverse order".

#. In the case of Posts and Telegraphs Board and Ors. Vs. C.S.N.Murthy JT 1992 2 SC 357 the Lordships of the Supreme Court held as under :-

"An order of compulsory retirement is not an order of punishment F.R. 56(i) authorises the Government to review the working of its employees at the end of their period of service referred to therein and to require the servant to retire from service if, in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record".

#. The powers of this court of judicial review of the order of the Government under which an officer is ordered to be prematurely retired is very very limited. Judicial review of such an order is permissible if the order is passed arbitrarily or malafide or if it is based on no evidence.

##. In this case, the respondents have given out a details of adverse remarks in the confidential reports of the petitioner. The confidential reports, and record of the department inquiries pending against the petitioner, was the material with the Review Committee while considering the case of the petitioner. Now the only question which calls for consideration of this couJ.....

a reasonable man could have formed the opinion to recommend for premature retirement of the petitioner in the public interest or not. Second question is whether this material though available with the Review Committee can be said to be no material or evidence sufficient to form the opinion to recommend the petitioner's premature retirement from the services.

##. The recommendations of the Review Committee are as under :-

Sr Year of C.R. Gradation Adverse remarks

1. 1.1.71 to 31.12.72 Good Corrective Adverse Remarks

2. 1.1.73 to 31.12.73 | C.Rs. are not He was on earned/Half pay

1.1.74 to 31.12.74 | written Extra ordinary leave.

3. 1.1.75 to 17.6.75 -do- Some period of the duties was short and during the rest period, he was on extra ordinary leave.

4. 9.8.75 to 19.12.75 Fair No adverse remarks.

5. 1.4.75 to 31.3.77 Good Corrective Adverse Remarks.

6. 1.4.77 to 13.1.78 Good -

7. 1.4.78 to 26.11.78 Officer of -
hot temper

8. 27.11.78 to 31.3.79 Not good -

9. 1.4.79 to 31.3.80 Fair Corrective Adverse Remarks

10. 1.4.80 to 30.7.80 Fair -do-

11. 1.8.80 to 31.3.81 | C.R. are not He was on unauthorised
| written leave during this period

absence are shown.

13. 25.7.83 to 31.3.84 Good -

Thus, looking of the C.Rs. of Shri Pandit, his services is not found satisfactory.

The C.Rs. for the period 1.8.80 to 24.7.83 are not written as he was unauthorised absent.

(11) The following gist of C.Rs. of Shri Pandit shows that his
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mental condition is also not good. As his nature is found too hot and due to his mental condition is found imbalanced, he remains absent so often and is not in a position to perform the government duties in good manner.

Sr Year of C.R. Adverse remarks

1. 1.4.68 to 31.12.68 Mentally unstable officer.

2. 15.2.71 to 31.12.71 Mind is unbalanced.

3. 1.1.72 to 31.12.72 Nature is whimsical.

Shri Pandit is overall a good officer. But
as he is a patient of Insomnia (as known
from him), he losses sense of reasoning
when he remains disturbed in working and he
finds difficult to work.

5. 1.4.77 to 13.1.78 Overall a good officer but as reported by
him sometimes he losses temper and sense of
reasoning and finds him unhealthy and
difficult for carrying the work.

6. 26.7.78 to 31.3.79 Hot tempered officer.

7. 1.8.80 to 24.7.83 No remarks offered as Shri Pandit
Dy.Ex.Engineer remains absent from duties
voluntarily.

iii) It may be mentioned at this stage that one departmental enquiry
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against Shri Pandit is initiated for his misbehaviour and
indiscipline. Though this point has come to the notice of the
Review Committee, the Committee has not at all put up emphasis
on these points while taking decision of premature retirement of
Pandit.

3) Thus, because of Shri Pandit not satisfying the overall
satisfactory standard, the committee recommends immature
retirement of him after the age of 50.

Sd/- Sd/- Sd/- Sd/-

(B.K.Parmar) (I.M.Shah) (V.B.Patel) (J.F.Mistry)
Deputy Secy. Secretary Secretary Secretary
(Services) (Narmada) (Area Devt.) (Irrigation)

##. This recommendations were placed for the final
decision before the Secretary, Personnel G.A.D., who has
taken decision on 8/3/86 to prematurely retire the
petitioner, which has been confirmed by the then Hon'ble
Chief Minister on 14/3/86. This decision reads as under
:-

"Shri U.N.Pandit, Deputy Executive Engineer
attained the age of 50 years on 8/5/84, his date

of birth being 9/5/1934.

The recommendation of the review committee can be seen at p.105-107/cs. the committee has come to the conclusion that the record of Shri Pandit cannot be considered as satisfactory and the mental condition is also not good. He also remained on unauthorised absence from 1/8/80 to 24/7/83.

Shri Pandit has been working as Dy.Ex.Engineer since 1962. As he has put in such a long service as Dy.Ex.Engineer, his reversion to the lower cadre will not serve any purpose specially in view of his mental condition.

In view of the recommendation of the Review Committee, Shri Pandit deserves to be retired prematurely. He may be retired by giving him three months' salary in lieu of notice as he has already continued for nearly two years after the age of 50 years."

##. From this record I find that the petitioner is in habit of leaving on half pay/extra ordinary leave. From 1/1/73 to 31/12/74, 1/1/75 to 17/6/75 he remained on leave and as such his Confidential Reports could not be written for the year 1973-75. For the period from 1/1/72 to 31/12/72 corrective adverse remarks were there. Same is the thing with the years 1976-77 and 1979-80. For the period from 1/4/81 to 24/7/83 he was on unauthorised leave. No specific reasons were shown for absence and as a result thereof his Confidential Report could not be written. On the basis of this material the opinion is formed that his work is not satisfactory. It is true that there are good, fair and adverse remarks but if we go by the facts of long leave of the petitioner in the year 1973-74 and unauthorised absent during the period from 1/4/81 to 24/7/83 coupled with his Confidential Reports where his work was reported adversely or corrective remarks were given, on this material a reasonable man could have formed the opinion for his premature retirement from the services. In the A.C.Rs. for the period from 1/4/68 to 31/12/68, 15/2/71 to 31/12/71, 1/1/72 to 31/12/72, 1977-78 and 1978-79, I find that he was reported to be mentally unstable officer or unbalanced mind person or patient of Insomnia or tempered officer. In one departmental inquiry in 1980 he was punished by minor penalty of censure. It is true that a

departmental inquiry was pending when his case for premature retirement was considered but it was not taken into consideration by the Review Committee. However, during the pendency of this Special Civil Application in that inquiry the charges No.1 was partly proved against him whereas charges No.2, 3, 6 and 10 were proved fully and as a result thereof a penalty of cut of Rs.50/- p.m. from his pension was ordered for three years.

##. In the presence of this material, it cannot be said that the decision taken by the Review Committee is wholly perverse. Sufficient material was available before the Review Committee and on the basis of which a reasonable man could have formed the opinion that the petitioner should be retired prematurely in public interest. The decision of this Court in the case of Jashvantsinh J. Gohel Vs. State of Gujarat in Special Civil Application No.1979 of 1986 decided on 17/9/98 (Coram : Kundan Singh, J.) is of no help to the petitioner. From the material on the record, which was there before the Review Committee, it is a case where rightly the petitioner was ordered to retire prematurely in the public interest. Merely because the word public interest is not mentioned in the impugned order, it will not render it to be invalid and that too to the extent where it has to be quashed and set aside only on this ground. The provision under which this order has been passed is mentioned therein and as such it is a case where the petitioner has been retired prematurely in the public interest. The petitioner has not challenged this order on the ground of malafides. The challenge is based only on the ground of no evidence or an arbitrary order which case the petitioner has failed to make out. The decision on which reliance is placed by the learned counsel for the petitioner is hardly of any substance and help to him in this case. Each case has to be decided on its own facts. It is no more res integra that uncommunicated adverse remarks can be looked into by the reviewing committee. So far as the pending inquiry is concerned it was not relied by the Review Committee while recommending the case of the petitioner for premature retirement.

As a result of the aforesaid discussion, this Special Civil Application fails and the same is dismissed. Rule is discharged. Interim relief, if any, granted by this court stands vacated. The petitioner is directed to pay Rs.500/towards costs of this petition to the respondent.

(S.K.Keshote, J.)

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